

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Commonwealth Edison Company

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Docket No. 13-0495

Approval of the Energy Efficiency and
Demand-Response Plan pursuant to
Section 8-103(f) of the Public Utilities Act.

**REPLY BRIEF OF THE STAFF
OF THE ILLINOIS COMMERCE COMMISSION**

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Staff of the Illinois Commerce Commission (“Staff”), by and through its undersigned counsel, pursuant to Section 200.800 of the Illinois Commerce Commission’s (“Commission” or “ICC”) Rules of Practice (83 Ill. Adm. Code 200.800), respectfully submits its Reply Brief in the instant proceeding.

Commonwealth Edison Company (“ComEd” or the “Company”) filed its Energy Efficiency (“EE”) Plan (ComEd Ex. 1.0 and Appendices) and testimony in support thereof on August 30, 2013. The following parties intervened: the Environmental Law & Policy Center (“ELPC”), the Natural Resources Defense Council (“NRDC”), the Citizens Utility Board (“CUB”), the Coalition to Request Equitable Allocation of Costs Together (“REACT”), the Midwest Cogeneration Association, the Illinois Industrial Energy Consumers (“IIEC”), the Chicago Infrastructure Trust (“CIT”), the People of the State of Illinois (“AG”) and the City of Chicago (“City”). A prehearing conference was held pursuant to notice on October 2, 2013, and a schedule was set by agreement of the

parties. Testimony was pre-filed in accordance with the agreed-upon schedule by the AG, CIT, CUB/City, ComEd, ELPC, IIEC, MCA, NRDC, REACT, and Staff. An evidentiary hearing was conducted on December 4, 2013. Pursuant to the schedule entered by the Administrative Law Judge, Staff and the following parties filed Initial Briefs (“IBs”) on December 13, 2013 in the above-captioned matter: AG, ComEd, CUB/City, ELPC, IIEC, MCA, NRDC, and REACT.

Many of the arguments made in the Initial Briefs (“IBs”) of the parties have already been fully addressed in Staff’s Initial Brief. In the interest of avoiding unnecessary duplication, Staff has not repeated every argument or response previously made in Staff’s IB. Thus, the omission of a response to an argument that Staff previously addressed simply means that Staff stands on the position taken in Staff’s IB.

I. FLEXIBILITY AND COST-EFFECTIVENESS: REPLY TO COMED AND NRDC

Staff is surprised by ComEd’s and NRDC’s significant opposition to disclosing to the Commission changes ComEd makes to the approved Plan during implementation. Staff’s recommendation is certainly reasonable and it should be adopted. ComEd’s request for flexibility to deviate from a Commission-approved Plan is accompanied by an unwillingness to provide the Commission with transparency and insight into ComEd’s decision-making process when it chooses to deviate from that Commission-approved Plan, which Staff finds troubling. Staff is likewise surprised by NRDC’s accusations that Staff is attempting to “micromanage” the portfolio simply by requiring ComEd to report how it uses the flexibility it requests to the Commission, given that the NRDC itself

expresses concern regarding the proposal to eliminate annual savings evaluation dockets in favor of a single review at the end of the three-year Plan. (NRDC IB, 23.)

ComEd argues that Staff's reporting recommendations, which would keep the Commission apprised of changes to the Commission-approved Plan, is an example of Staff attempting to "micromanage" the portfolio, and "it would essentially require ComEd to re-run its entire measure screening process every time an avoided cost input, TRM value, NTG value or program element cost changes." (ComEd IB, 87.) NRDC also argues that Staff's recommendation is an attempt to "micromanage" the portfolio. (NRDC IB, 26.) The Commission should reject these assertions.

Adoption of Staff's recommendation is necessary for the Commission to ensure that the Company is utilizing its Commission-authorized flexibility in a reasonable and prudent manner. The so-called "micromanagement" is for the Commission's benefit, not for Staff's. The Commission has previously determined that a flexibility not outlined in the Illinois Public Utilities Act is afforded to the utilities in administering EE Plans subject to adequate reporting to the Commission. See, ICC Order Docket Nos. 13-0423/13-0424 (Consol.) at 12 (Dec. 18, 2013). This reporting is required for the Commission to undertake a meaningful review of the Company's reasonable and prudent use of the Commission's generous grant of flexibility. It cannot be said that Staff is attempting to "micromanage" ComEd's portfolio, when Staff has agreed that annual savings evaluation dockets are unnecessary if Staff's reporting recommendations are adopted and that flexibility is essential and should again be authorized by the Commission. Any suggestion that the recommendation constitutes an attempt to "micromanage" ComEd's portfolio is absurd.

Ironically, in its request for flexibility, ComEd argues that programs could lose their cost-effectiveness during implementation so to ensure ComEd can respond to such changes (program-level TRC changes), ComEd must retain sufficient flexibility to reallocate funds across program elements including the ability to modify, discontinue and add program elements based on subsequent market research and actual implementation experience. (ComEd Ex. 1.0, 91.) The market research findings upon which ComEd claims it will use as a basis for making such decisions such as dropping cost-ineffective programs during implementation is *exactly* the type of information Staff requests ComEd provide in its reporting to the Commission. In requesting flexibility, ComEd states that “as information is received and analyzed, program designs will be modified accordingly.” (ComEd Ex. 2.0, 57-58.) Again, this is exactly the type of information Staff requests ComEd to provide in its reporting to the Commission. Staff believes it is reasonable for ComEd to include this type of information *it already has in its possession* to the Commission. Having this type of information filed with the Commission should help facilitate the timely completion of Rider EDA reconciliation proceedings.

ComEd states that it should be allowed to add new program elements as long as those program elements pass the TRC test. (ComEd IB, 92.) Staff’s recommendation to limit participation of cost-ineffective measures is comparable to this last provision proposed by ComEd.

ComEd states that it currently collects implementation and tracking data on a daily or weekly basis for most programs because it allows ComEd to monitor the progress and performance of the programs and program managers can modify

marketing tactics and incentive structures as needed to remediate program performance shortfalls. (ComEd Ex. 1.0, 104.) Staff cannot reconcile the fact that ComEd requires its implementers to report to ComEd on a daily and weekly basis with the Company's unwillingness to report to the Commission how it uses its flexibility on even an annual or semi-annual basis. ComEd's position is unreasonable and should be rejected.

Based on past experience, Staff is concerned about the addition of cost-ineffective measures to the programs after the Commission approves the Plan. Staff believes the Commission's order in this docket should expressly prohibit ComEd from taking such action in exercising its flexibility.

This is ComEd's first Plan filing wherein ComEd proposes modified savings goals for every single program year of the Plan and it proposes to promote cost-ineffective measures. (ComEd Ex. 1.0 Appendix A, 7.) The reporting requirements Staff proposes are further necessitated by the change from annual to triennial review dockets. That is, given the longer gaps between implementation and the evaluation proceeding, it is important the Company keep the Commission and all interested parties apprised on a timely basis through such reports of changes made by ComEd under its grant of flexibility. In light of the vast flexibility the Company is requesting the Commission grant to ComEd, Staff's recommendations are certainly reasonable and they should be adopted.

NRDC argues against limiting cost-ineffective measures in ComEd's portfolio because it believes the "TRC test as currently applied by Illinois utilities is not a balanced assessment of the costs and benefits of the efficiency measures because it

includes all of the costs but not all of the benefits of a program or measure.” (NRDC IB, 27.) Staff disagrees with NRDC. ComEd’s TRC analysis complies with the statutory definition of the TRC test. It is unreasonable to reject Staff’s recommendation on the basis that NRDC alleges ComEd’s TRC analysis excludes certain “benefits.” NRDC provides no evidence, analysis or quantification of the alleged “benefits” that it claims are being excluded. Indeed, no party in this proceeding objected to ComEd’s TRC analysis in direct testimony. Quite simply, NRDC’s argument is unsupported by any facts in evidence.

Additionally, the Commission has previously rejected NRDC’s assertions regarding the alleged exclusion of benefits in ComEd’s TRC analysis in ICC Docket No. 12-0544. The Commission’s Order in ICC Docket No. 12-0544 states:

NRDC has also made more general arguments about the ComEd and AIC assumptions that it believes leads the utilities to understate the benefits associated with energy efficiency programs. (NRDC Response at 6-7; Reply at 6) It appears to the Commission that ComEd and AIC performed their analyses in a manner consistent with those previously approved by the Commission. The Commission finds that NRDC has not provided an adequate basis or rationale for deviating from the Commission’s past practice, or for modifying the energy efficiency recommendations contained in the IPA’s Procurement Plan, as modified in this Order.

Commonwealth Edison Co., ICC Order Docket No. 12-0544, 270 (Dec. 19, 2012). The Commission should again conclude that NRDC has not provided an adequate basis or rationale with respect to its belated criticisms of ComEd’s TRC analysis in this proceeding.

ComEd argues against Staff’s recommendation to limit cost-ineffective measures by stating that net benefits would have to be reduced by over \$250 million over the three-year period for Plan 3 for the entire portfolio TRC test result to be 1.0, and ComEd

argues the risk the portfolio would produce net losses for ratepayers is virtually non-existent. (ComEd IB, 84.) NRDC similarly argues there is “no danger” that ComEd would promote enough cost-ineffective measures to significantly affect the overall cost-effectiveness of the portfolio. (NRDC IB, 27.) Staff disagrees. In order to demonstrate ComEd’s and NRDC’s short-sighted view, Staff provides an example below based on actual ComEd data from its Retro-Commissioning Program.

ComEd’s budget for Plan 3 for the Optimization Program (which includes the Retro-Commissioning Program) is \$36,292,073. (ComEd Ex. 1.0, 3.) ComEd spent \$8,279,682 on the Retro-Commissioning Program in PY3 and PY4 combined. (Staff Ex. 1.3, 88, 90.) ComEd’s Retro-Commissioning Program over only two program years, PY3 and PY4, produced \$1.3 million (\$1,298,666) in net economic losses to Illinois consumers. (Staff Ex. 1.3, 89, 91.) Hypothetically, if this program continues to perform as the most recent experience with the program demonstrates, then the program would be forecasted to produce \$5.7 million (\$5,692,404) in net economic losses to Illinois ratepayers for Plan 3 based on aggregating up the most recent expenditure to net economic loss ratios. Staff emphasizes that in ComEd’s previous Plans that were approved by the Commission, ComEd always forecasted that the Retro-Commissioning Program would be cost-effective and produce positive net economic benefits to consumers. In the previous Plans, ComEd included only measures that were projected to be cost-effective. The Retro-Commissioning Program has continuously produced net economic losses to consumers, despite projections of net economic benefits in the Plan filings. (Staff IB, 64.) The assumptions upon which those TRC forecasts are made in the Plan filings inevitably change based on actual implementation experience as clearly

demonstrated for the Retro-Commissioning Program during PY3 and PY4 explained above. In summary, ComEd's previous experience demonstrates that the forecasted TRC for a program will very likely be different from the ex post or actual TRC test cost-effectiveness results that results from implementing the program due to a variety of factors, including participation of cost-ineffective measures. This is just one of many examples of the major differences between projected and ex post TRC results (most of which are not driven by ComEd's changes in TRC methods between Plan filing and implementation).

ComEd proposes to spend \$356 million on EE programs over the course of Plan 3 (excluding DCEO) under Section 8-103 and another \$168 million under Section 16-111.5B, for a total of over half a billion dollars (\$524 million) that will flow through ComEd's Rider EDA during Plan 3. (ComEd Ex. 1.0, 3; Staff Ex. 3.0, 30.) Excluding ComEd's portfolio-level costs, ComEd proposes to spend \$299,527,831 on implementing EE programs. (ComEd Ex. 1.0, 3.) ComEd claims that spending almost \$300 million during the course of Plan 3 is projected to produce \$250 million in net economic benefits to ratepayers. (ComEd IB, 84.) Hypothetically, if the performance of ComEd's Plan 3 portfolio is like the performance of ComEd's Retro-Commissioning Program during PY3 and PY4, then the Plan 3 portfolio would end up producing \$47 million (\$46,980,880) in net economic losses to consumers, far from the \$250 million in net economic benefits forecasted by ComEd.

The point of Staff's hypothetical example above is not to allege that ComEd will perform that poorly over Plan 3, rather Staff was demonstrating that there should be no expectation that the forecasted portfolio-level TRC in the Plan will come to fruition

during implementation because the inputs (e.g., participation, avoided costs, NTG ratios, savings values) inevitably will change. Given the uncertainties about which inputs will change, Staff believes it is reasonable for the Commission to order ComEd to take steps “within ComEd’s control” in order to maximize net benefits for ratepayers. (Staff IB, 53.) For example, restricting the number of cost-ineffective measures that can be implemented during the Plan is a reasonable way to help minimize the potential for net economic losses to occur. (Staff IB, 59-64.) Indeed, the Commission has explicitly approved such approved in ICC Docket No. 12-0645 when it granted a waiver to remove cost-ineffective measures to ensure an EE program would become cost-effective. ICC Order Docket No. 12-0645 at 3 (Feb. 14, 2013).

As explained by Staff, increased participation of cost-ineffective measures during implementation serves to erode net economic benefits to consumers, and undermines the policy objectives set forth in the EE statute for requiring the EE programs, specifically that “[r]equiring investment in cost-effective energy efficiency and demand-response measures will reduce direct and indirect costs to consumers by decreasing environmental impacts and by avoiding or delaying the need for new generation, transmission, and distribution infrastructure.” 220 ILCS 5/8-103(a) (emphasis added).

ComEd screened 2,173 measures, and found that 581 measures were cost-ineffective, and 1,592 measures were cost-effective. It is reasonable for the Commission to impose certain limitations on cost-ineffective measures in order to encourage ComEd to promote the 1,592 cost-effective measures with which it would have virtually unlimited flexibility in order to increase net benefits for Illinois consumers. (ComEd Ex. 1.0 Appendix A, 7.)

It should also be noted that Staff and the AG's proposals concerning flexibility are not competing, meaning the Commission could adopt both Staff's and the AG's proposals. In the event the Commission adopts the AG's flexibility proposal, Staff would urge the Commission to also adopt Staff's flexibility proposal.

II. BREAKTHROUGH EQUIPMENT AND DEVICES: REPLY TO COMED AND NRDC

The Commission should define "breakthrough equipment and devices" as "measures or programs in their early stage of development that are subject to substantial uncertainty about their cost-effectiveness during the planning period."

NRDC argues that the Commission should address the issue of inappropriate allocation of Research and Development ("R&D") (i.e., breakthrough equipment and devices) expenditures on a case by case basis. (NRDC IB, 30.) Staff agrees with NRDC that inappropriate allocation of R&D should be addressed on a case by case basis, but Staff believes it is necessary for the Commission to define breakthrough equipment and devices in order to address any inappropriate allocations in the future. It would be fundamentally unfair to argue ComEd inappropriately allocated R&D expenditures on a case by case basis in a future proceeding if the Commission never provided a definition to ComEd of what expenditures should qualify as R&D. It is reasonable for the Commission to provide ComEd such guidance in this proceeding.

Section 8-103(g) of the Act requires that "No more than 3% of energy efficiency and demand-response program revenue may be allocated for demonstration of breakthrough equipment and devices." 220 ILCS 5/8-103(g). Based on NRDC's IB and lack of concern regarding whether the statutory requirement is complied with, it appears NRDC does not support the policy of that statutory limitation. (NRDC IB, 29-30.)

Nevertheless, the Commission is tasked with ensuring ComEd complies with the requirements set forth in the statute, and the Commission should reject NRDC's position.

NRDC argues that the definition proposed by Staff "could lead to inappropriate, after-the-fact challenges to cost-recovery for measures and/or programs that are later determined to have failed a retroactive cost-effectiveness screening." (NRDC IB, 29.) Staff disagrees with NRDC's concerns. Staff has never challenged the prudence of a utility's expenditures on EE on the basis of *retroactive* cost-effectiveness screening, because determining whether a judgment was prudently made necessarily requires consideration of only those facts available at the time judgment was exercised and hindsight review or *retroactive* cost-effective screening would be impermissible. Staff recommends planning TRC values for new measures to be provided to the Commission, thus it will be clear some of the facts ComEd considered when adding new measures to its portfolio.

In order to help alleviate NRDC's concerns, Staff recommends that to the extent a measure proposed in ComEd's Plan falls under the definition of "breakthrough equipment and devices" such as LEDs (ComEd Ex. 1.0 Appendix A, 6) and the participation of this breakthrough equipment and device measure is forecasted in ComEd's Plan as exceeding the 3% statutory limitation, then ComEd should modify participation estimates, savings, and costs in its Revised Plan such that the 3% statutory limitation is not exceeded. ComEd failed to identify other breakthrough equipment and device measures in its rebuttal testimony, and thus has failed to show that the 3% statutory limitation on breakthrough equipment and devices has not been

exceeded. Accordingly, it is reasonable for the Commission to order ComEd to work with the SAG to identify measures which meet the definition recommended by Staff, and further direct that ComEd shall list the measures included in its Plan which meet that criteria in a compliance filing ComEd files in this docket within 45 days of the date of the Order in this proceeding.

III. REALIZATION RATE FRAMEWORK: REPLY TO THE AG, COMED, AND ELPC

The Commission should deny ComEd's request to adopt its Realization Rate Framework proposal because it attempts to circumvent existing Commission policies concerning evaluating savings that were established for all Illinois utilities operating EE programs pursuant to Sections 8-103 and 8-104 of the Act.

ComEd argues that its historic realization rates vary greatly by program, and that is a sufficient reason for the Commission to adopt ComEd's proposed Realization Rate Framework. (ComEd IB, 84.) The Commission should reject ComEd's argument because ComEd has provided no evidence to show that realization rates will continue to vary significantly by program under the IL-TRM regime. Because the PY5 evaluations are the first evaluation reports for ComEd that use the IL-TRM, and ComEd did not produce the PY5 evaluation reports in this proceeding, there is no evidence in the record showing realization rates will continue to vary greatly by program which is the basis of ComEd's position that the Realization Rate Framework should continue under Plan 3.

In its IB, ELPC recommends that "the Commission conditionally approve the proposed realization rate framework, subject to a review and favorable recommendation by the SAG." (ELPC IB, 13.) ELPC further explains that "this would allow SAG to review and examine the implications of the realization [rate] framework on the TRM and

NTG framework.” Id. The Commission should reject ELPC’s position. Staff thoroughly explained that the evidence in the record clearly demonstrates that the Realization Rate Framework contradicts existing Commission gross savings policies applicable to all Illinois utilities and DCEO and that it was improper for ComEd to propose such a framework in this docket. (Staff IB, 37-45.) Staff also explained that the conditions under which such framework was proposed in the Plan 2 filing are no longer applicable due to the gross savings policies adopted by the Commission in ICC Docket No. 13-0077. (Staff IB, 40-41.)

ComEd argues that it is only requesting the deeming of realization rates with respect to factors that are “outside ComEd’s control.” (ComEd IB, 82.) As an initial matter, ComEd provides no explanation regarding what factors it considers to be “outside ComEd’s control.” The evidence that is in the record demonstrates that there are no such factors under Plan 3 that would be “outside ComEd’s control.” (AG Ex. 2.0C, 18.) The AG argues that any EE measures that are not included in the IL-TRM are left to ComEd to make reasonable assumptions concerning their savings, and clearly ComEd has control over the assumptions that ComEd makes in this regard. (AG IB, 54-55.) Staff agrees with the AG’s characterization that there are no such factors under Plan 3 that would be “outside ComEd’s control.” By definition the EE measures that are not included within the IL-TRM would be variables “within ComEd’s control.” Id. To the extent that evaluators believe that ComEd made an unreasonable assumption concerning the EE measure that is not within the IL-TRM, ComEd should be held accountable. Id. ComEd argues that Staff fails to recognize that a “number of measures offered in ComEd’s residential and business programs are not currently

addressed in the TRM.” (ComEd IB, 83.) It appears that ComEd disagrees with Staff and the AG that there are no factors outside of the IL-TRM over which ComEd has no control.

ComEd’s Realization Rate Framework request does not sufficiently protect against, and would allow, unreasonable savings assumptions with respect to EE measures that are not included within the IL-TRM. (AG IB, 54-55.) For this reason, the Commission should deny it.

The risk that ComEd asks relief from is minimal in that it will be associated with a small amount of savings for measures, if any, that ComEd has not vetted through the Commission-established stakeholder review and Commission approval process. In addition to representing a small amount of savings, such measures are often not incorporated into the IL-TRM because there is no adequate basis provided for the savings estimates or it is believed the measure should be implemented in a customized way. Cases where savings estimates have no firm basis or measures are implemented in a customized way are cases where there is generally no credible evidence upon which to deem realization rates. It would be inappropriate in such cases to treat ComEd’s Realization Rate Framework proposal as a back-stop for measures excluded from the IL-TRM.

ComEd argues that “[b]ecause the TRM administrator ... had a limited budget and resources, it was unable to incorporate all of the measure requests into the current TRM. While not the fault of [the TRM administrator], stakeholders must acknowledge that there will be measures offered in programs that are not also in the TRM.” (ComEd Ex. 3.0, 74.) Staff has a simple solution for ComEd’s alleged problem of getting

measures into the IL-TRM as discussed further below. With respect to joint program evaluations, common evaluation costs are split across the utilities, but to the extent a utility wants a particular aspect addressed in the evaluation that a different utility does not want addressed, the utility that wants the aspect addressed would simply be billed for that analysis. (ComEd Ex. 1.0, 41.) Consistent with the process ComEd uses with its evaluator in conducting the joint program evaluations with the gas utilities, the Commission could direct ComEd to contract directly with the TRM Administrator to complete certain new measures that ComEd believes it needs to have deemed in the IL-TRM for the risk to be eliminated. If the Commission adopts this proposal, which Staff believes ComEd could still implement without a Commission directive, then ComEd's alleged problem in this regard should be eliminated.

Staff also believes adopting ComEd's Realization Rate Framework could complicate ComEd's cost allocation process for joint programs considering the gas utilities operate under the existing Commission-approved gross savings policies specified in the IL-TRM. Specifically, ComEd's Plan states that "[t]he utilities will determine a framework for cost allocation based on savings/benefits to each utility's customers." (ComEd Ex. 1.0, 49.) If ComEd's proposed Realization Rate Framework is adopted, it is not clear whether the savings/benefits would be accurately represented if savings are based on deemed realization rates for ComEd, while the gas utility savings are based on the Commission-approved gross savings policies adopted for all utilities and DCEO. Accordingly, the Commission should reject ComEd's attempt to adopt a gross savings framework different from that the Commission previously approved for all the utilities (including ComEd) and DCEO.

In its IB, ComEd includes the deemed PY5 realization rates to support its request to deem realization rates by showing the historic realization rates vary by program and that even with the establishment of the IL-TRM, there are still measures outside of the IL-TRM that need to have realization rates deemed. (ComEd IB, 84; ComEd IB Appendix N, 5; Staff Ex. 1.3, 13.) Staff disagrees with ComEd. Within the table, “ComEd Deemed Parameters PY5,” ComEd lists six realization rate values for which it believes need to be deemed outside of the IL-TRM for PY5 and going forward: 0.87 Residential Lighting Fixtures, 0.90 Appliance Recycling Refrigerators, 0.75 Appliance Recycling Freezers, 1.00 Appliance Recycling Window AC Units, 0.73 Single Family Water measures (electric domestic hot water (“DHW”)), and 0.997 Commercial and Industrial (“C&I”) New Construction Systems Track Projects. There is no basis for ComEd to deem any of these realization rates in PY5 due to the creation of the IL-TRM, as set forth in detail below.

Out of the six realization rate values presented in Appendix N of ComEd’s Initial Brief for PY5, the only ones that potentially could represent any significant amount of energy savings during ComEd’s Plan 3, and thus any degree of purported risk to ComEd if the values are not deemed, are those related to the Appliance Recycling Program, which is the second largest residential program in ComEd’s Plan 3 portfolio. (ComEd Ex. 1.0, 3.) For ComEd’s Appliance Recycling Program, ComEd states, albeit incorrectly, that it is deeming realization rates of 0.90 for refrigerators and 0.75 for freezers. (ComEd IB Appendix N, 5; Staff Ex. 1.3, 13.) Staff notes that the realization rate for the measures of this program is composed of the part use factor/adjustment as stated in that document. What ComEd apparently fails to realize is that the IL-TRM in

effect for PY5, filed as ComEd Ex. 1.0 Appendix C, clearly shows that the realization rate for refrigerator and freezer recycling *is deemed for ComEd* and all the rest of the utilities and DCEO for PY5. Specifically, the IL-TRM explicitly states for the refrigerator and freezer recycling measure: “Part Use Factor = To account for those units that are not running throughout the entire year. = 0.877[.]” (ComEd Ex. 1.0 Appendix C, 327.) Thus, there is no basis to deeming these factors as part of ComEd’s Realization Rate Framework since these factors are already deemed as part of the IL-TRM.

Appendix N of ComEd’s Initial Brief for PY5 shows deeming a realization rate of 0.87 for the Residential Lighting Program light fixtures. (ComEd IB Appendix N, 5.) Light bulb fixture sales only accounted for 0.3% of PY5 light bulb sales under ComEd’s Residential Lighting Program, and therefore the risk associated with retroactive adjustments is virtually non-existent for ComEd since this energy efficiency measure savings represents such a tiny portion of ComEd’s portfolio. The realization rate or in-service rate (“ISR”) of 0.87 for fixtures that ComEd purportedly needs to have deemed in PY5 as specified in Appendix N is already deemed as part of the PY5 IL-TRM. (AG Cross Ex. 1 (NRDC 4.05_Attach 1, 8); ComEd Ex. 1.0 Appendix C, 455.) Specifically, the record shows that the ISR of 0.875 is already deemed within the IL-TRM for light bulb fixtures based on the Interior Hardwired CFL Fixture section of the IL-TRM which covers all PY5 CFL fixtures. (AG Cross Ex. 1 (NRDC 4.05_Attach 1, 16); ComEd Ex. 1.0 Appendix C, 455.) Thus, it is unnecessary for ComEd to deem realization rates for fixtures outside of the IL-TRM.

Appendix N of ComEd’s Initial Brief for PY5 shows ComEd proposes to deem the realization rate or ISR of 0.73 for Single Family Water measures (electric DHW).

(ComEd IB Appendix N, 5.) Similar to the rest of the measures described above, the ISR for domestic hot water measures such as faucet aerators is already deemed within the IL-TRM. (ComEd Ex. 1.0 Appendix C, 408; Staff Ex. 1.3, 13.) The IL-TRM explicitly states for this measure: “ISR=In service rate of faucet aerators dependant on install method as listed in table below” and the table provides an in-service rate of 0.95 for this measure. (ComEd Ex. 1.0 Appendix C, 408.) Thus, there is no basis for deeming realization rates for the Single Family Water measures (electric DHW) going forward outside of the IL-TRM process.

The last realization rate listed in ComEd’s table in Appendix N for PY5 for which a value is specified for deeming is 0.997 for the C&I New Construction Systems Track Projects. As explained in ComEd’s discussion of the New Construction Program in ComEd’s Plan 3, ComEd has discontinued the Systems Track portion of this program. (ComEd Ex. 1.0, 69-74.) Accordingly, there is no need to deem the realization rate for this program element going forward since it no longer exists.

Staff also notes that in Appendix N of ComEd’s Initial Brief for PY5, a number of programs indicate the realization rate is “NA” because it is a “New Program – realization rates are not eligible for deeming at this time[.]” (ComEd IB Appendix N, 5; Staff Ex. 1.3, 13.) Staff notes many of those programs are customized in nature as described in ComEd’s Plan and thus the realization rates should not be deemed per the Plan 2 Order preventing deeming of custom realization rates: “Components of realization rates that are within the control of ComEd (e.g., data entry errors or custom engineering calculations) will not be deemed.” ICC Order Docket No. 10-0570 at 49 (Dec. 21, 2010) (emphasis added). For example, Industrial Systems, C&I New Construction

Comprehensive Track, and Data Centers Programs are all customized in nature and should not have deemed realization rates. (ComEd Ex. 1.0, 64-77.) The AG concurs and states that “poor estimation of custom measure savings by ComEd or its contractors should fall on the shoulders of ComEd.” (AG IB, 54.) Allowing ComEd to take advantage of using its assumptions to eliminate this risk beforehand will not accurately track savings and is an unreasonable request.

As thoroughly explained in Staff’s IB, ComEd requests relief of minimal risk associated with a likely small amount of savings measures ComEd has not vetted through the Commission’s established stakeholder review process. (Staff IB, 42-43.) Staff believes the Company is finding problems where none exist.

IV. FILING EVALUATION CONTRACT

The Commission should order ComEd to file the independent evaluation contract and scope of work in this docket within fourteen days of its execution, consistent with the approach adopted in the Plan 1 Order.

ComEd argues that the Commission should reject Staff’s proposal that ComEd file its evaluation contract within 14 days of its execution. (ComEd IB, 67.) The Company argues that Staff will receive a copy of the executed contract and no other party has requested that the Company provide the Commission with a copy. Id. This argument should be rejected because limiting the availability of the contract is inconsistent with open and transparent implementation of the Plan.

Additionally, ComEd argues that the Commission need not intervene with respect to this matter because the Staff could, itself, file with the Commission the contract between ComEd and its independent evaluator. (ComEd IB, 67.) Because Staff is not

a party to the contract, Staff cannot attest to its authenticity. The correct approach is for ComEd to file the contract. In the Plan 1 proceeding, the Commission ordered ComEd to submit its contract with its independent evaluator as a compliance filing within 10 days of its execution: “the Commonwealth Edison Company shall submit any contract with an independent evaluator as a compliance filing in this docket within ten days of its execution[.]” Commonwealth Edison Co., ICC Order on Rehearing Docket No. 07-0540, 4 (March 26, 2008). The Commission stated:

We note that the evaluator would not be “independent,” as required by statute, if ComEd had total control over that evaluator. However, that does not mean that this Commission should be involved in the designing of an RFP, conducting interviews, and doing the many other tasks involved in hiring this evaluator. Rather, it means that this Commission has a supervisory capacity regarding the hiring and firing of this evaluator, meaning that ComEd must gain Commission consent to make the hiring and firing decisions regarding this evaluator.

We further note that the approach taken by the AG/CUB for gaining Commission consent is a reasonable one. ComEd would make compliance filings in this docket regarding its contractual relationship with the evaluator, as is set forth above. Pursuant to this approach, if Commission Staff had any concerns after review of these compliance filings, it could issue a Report to the Commission expressing its concerns, and, in the appropriate situation, this Commission could open a docket for the purpose of determining whether ComEd violated Section [8]-103 of the Public Utilities Act.

Id. at 3 (emphasis added). As the passage above makes clear, the Commission found such intervention necessary in its Plan 1 Order.

The Company has not made any assertion that this requirement is unduly burdensome. The Company was able to comply with the Plan 1 Order’s requirement to file the contract within 10 days of execution and, therefore, there is no question that it can do so within 14 days. Likewise, no argument has been made that the contract is materially confidential and proprietary; however, any such information may clearly be

redacted under the Commission's Rules of Practice. ComEd has not provided any evidence tending to show or made any argument to indicate that a deviation from the Commission's Plan 1 Order is warranted. Accordingly, the Commission should adopt Staff's proposal to require the Company to file the evaluation contract and scope of work within 14 days of its execution.

V. IL-TRM MEASURE-LEVEL EVALUATION RESEARCH

The Commission should order ComEd to require its Evaluator in developing evaluation plans to consider IL-TRM measure-level evaluation research a high priority at least on par with the other evaluation priorities listed in ComEd's Plan.

ComEd recommends the Commission reject Staff's recommendation to consider IL-TRM measure-level evaluation research a high priority because: (1) a general, vague rule would prove to be ineffective; and (2) it is not clear to ComEd how it would be implemented and how TRM updates would be prioritized with regard to other evaluation issues. (ComEd IB, 96-97.)

With respect to ComEd's first concern regarding vagueness of the recommendation, Staff finds it peculiar that ComEd would oppose Staff's proposal if it really believed it would have no effect. As explained in Staff's IB and below, Staff believes its recommendation would be effective and recommends the Commission adopt it in this proceeding. (Staff IB, 46-48.)

With respect to ComEd's second concern regarding how the proposal would be implemented, both Staff's and ComEd's IBs actually explain exactly how such recommendation would be implemented. (Staff IB, 46-48; ComEd IB, 97.) ComEd states that "it is the evaluator that establishes the annual plan regarding how best to use limited evaluation funds." (ComEd IB, 97.) Staff states that "the Commission should

order ComEd to require its Evaluator in developing evaluation plans to consider IL-TRM measure-level evaluation research a high priority at least on par with the other evaluation priorities listed in ComEd's Plan." (Staff IB, 49.) ComEd asserts that evaluation issues need to be reviewed on a case-by-case basis, keeping in mind that the evaluation budget is limited by statute. As described in detail in Staff's IB, Staff concurs with ComEd in this regard, but also notes that efforts should be taken to ensure these limited evaluation funds are not spent duplicating ComEd's ongoing market research and evaluation efforts and efforts should be taken to ensure the Evaluators understand that IL-TRM measure-level evaluation research is important to consider when developing their evaluation plans. (Staff IB, 47-48.) Thus, there is no basis in the record for the Commission to reject Staff's recommendation.

Despite ComEd's objection to Staff's recommendation, ComEd's own IB provides quite a bit of support for it. ComEd admits that nearly all parties agree that it is important to update the IL-TRM with new information, when it states that it "acknowledges the importance of updating the TRM with new information (and most stakeholders would likely concur)[.]" (ComEd IB, 96.) ComEd states that "[i]t is important to all stakeholders, including customers, that the best estimates of program impacts are made, which is the only way we can know the true impact and value of the energy efficiency portfolio." (ComEd IB, 81.) The evidence in the record and in prior Commission Orders clearly demonstrate the importance of ensuring the IL-TRM reflects the best estimates of energy savings values. (Staff IB, 45.) ComEd has a natural incentive to avoid having the Evaluators conduct measure-level evaluation research to update the IL-TRM for EE measures in which ComEd believes there is potential for the

measure-level savings to be reduced in the IL-TRM as a result of the evaluation. (Staff IB, 46.) As explained in the AG's IB, "ComEd has a great deal of involvement in development and approval of evaluation plans for its programs." (AG IB, 50.) Indeed, ComEd even contemplates providing input during the evaluation plan development. (Staff Group Cross Ex. 1, 146.) Thus, a Commission directive to require ComEd to direct its Evaluator to consider IL-TRM measure-level evaluation research important when developing the evaluation plan is necessary. The Commission should adopt Staff's recommendation in order to ensure the IL-TRM does not become obsolete.

The Commission should order ComEd to require its Evaluator in developing evaluation plans to consider IL-TRM measure-level evaluation research a high priority at least on par with the other evaluation priorities listed in ComEd's Plan.

Staff believes the AG's recommendation that the Commission direct ComEd to work with the SAG on providing input to draft EM&V plans so that SAG participants can recommend information and data that is gather[ed] and produced through the EM&V process is a reasonable request and consistent with the approach the Commission adopted for Ameren Illinois in past Plans. (AG IB, 56.)

VI. EXCLUSION OF FREE-RIDERSHIP AND SPILLOVER FACTORS

The Commission should reject ComEd's proposal to exclude free ridership whenever spillover is excluded when calculating the NTGR value.

ComEd proposes that "if an evaluation does not account for spillover, then the free rider effect should also be ignored." (ComEd IB, 79.) The Commission should reject ComEd's proposal for all the reasons set forth in Staff's IB. (Staff IB, 9-12.) Furthermore, the Commission should reject ComEd's recommendation because ComEd

has been unable to adequately support the basis of its recommendation. (Staff Group Cross Ex. 1, 146-149.) ComEd makes the recommendation that non-participant spillover and participant spillover must be included in every single deemed NTG ratio value; however, it is unable to explain how both components of spillover could actually occur for each EE program. (Staff Group Cross Ex. 1, 146-147.) It is likely the case that it may not make sense for certain programs to have a specific kind of spillover, and if that is the case, under ComEd's recommendation the Evaluators would be required to develop a value for spillover where there is no theoretical basis for it. For example, in general, a new EE program that has only been operational a portion of a program year is unlikely to have accumulated spillover within that program year. Under Staff's Modified Illinois NTG Framework, spillover is listed as a component that could be proposed for inclusion, where sufficient basis to account for spillover is found. (Staff Ex. 1.1, 1.)

The Commission should not require both components of spillover be included in the NTG ratio value for each EE program. Staff has requested, and the Company has not provided, support for its position. (Staff Group Cross Ex. 1, 146-147.) Instead, the Company response was that it was in the purview of the Evaluator, who essentially works under ComEd's direction and control. Id. It is reasonable to infer that if the Evaluator's response would be supportive of ComEd's position, ComEd would have provided it. See, e.g., *Shumak v. Shumak*, 30 Ill. App. 3d 188; 332 N.E.2d 177 (2nd Dist. 1975) (where a particular necessary fact rests peculiarly within the knowledge of one of the parties it is his duty to come forward with the proof and if he fails to do so, an inference or presumption is raised that the evidence, if produced, would be unfavorable

to his cause). The fact that ComEd gave a non-answer leads Staff to believe that the answer from the Evaluator would not be supportive of ComEd's position.

For the reasons provided above and set forth in Staff's IB, the Commission should reject ComEd's proposal. (Staff IB, 9-12.) The Commission should instead instruct the independent evaluators to make reasonable efforts to calculate both free ridership rates and spillover rates while being mindful of: (1) the costs of such evaluations, (2) the likely magnitudes of spillover and free ridership rates within a program, and (3) the significance of the program to the overall portfolio savings. If the Commission adopts ComEd's proposal, Staff would urge the Commission to require consistent NTG methodologies for measuring free ridership and spillover as discussed in Staff's IB. (Staff IB, 12-21.) If the Commission adopts ComEd's proposal, which it should not, Staff would urge the Commission to make it clear that deeming a zero value for spillover is perfectly reasonable.

VII. MODIFIED ILLINOIS NET-TO-GROSS FRAMEWORK

A. DELEGATING AUTHORITY

The Commission should order the Company to use Staff's proposed Modified Illinois NTG Framework (Staff Exhibit 1.1) and reject the AG's, ComEd's, ELPC's, and NRDC's proposed modifications to the NTG Framework. The Commission should adopt in its entirety the Modified Illinois NTG Framework set forth in Staff Exhibit 1.1.

ComEd incorrectly argues that adoption of Staff's Modified Illinois NTG Framework proposal constitutes a prohibited delegation of Commission authority. (ComEd IB, 72, citing Union Electric Co. v. Ill. Commerce Comm'n, 77 Ill. 2d 364, 383 (1979).) Staff's NTG framework proposal, however, is clearly not a delegation of Commission authority to the SAG.

ComEd argues that “[i]t is simply impossible, as well as unlawful, for the Commission to delegate its authority to, and impose a quasi-legal/adjudicatory process upon, a voluntary and collaborative grouping of stakeholders.” (ComEd IB, 73 (emphasis added).) Staff agrees with ComEd in part because the Commission established a process in adopting the NTG Framework in Plan 2 that had specific requirements for the SAG, and the SAG never fulfilled those requirements in a timely manner nor made any of the required filings. In contrast to the Plan 2 NTG framework, Staff ensured that its proposed Modified Illinois NTG Framework in this proceeding imposed requirements on ComEd, not the SAG, because the Commission has authority over ComEd, as Staff witness Hinman explained in her direct testimony:

Consistent with the last Commission-adopted NTG Framework, I propose that the SAG be involved in the NTG update process. In order to ensure that SAG’s recommendations are transmitted to the Commission, the proposal includes responsibilities for the utilities. Staff’s proposal contains specific guidelines to ensure that the NTG update process is completed in a timely manner.

(Staff Ex. 1.0, 37 (emphasis added).) Staff’s framework also imposes requirements on the Evaluator, who is a subcontractor of ComEd, and for which ComEd can include the necessary provisions in its contract with its Evaluator (that should be filed as a compliance filing in this proceeding within 14 days of its execution) to ensure the Evaluator complies with the Commission-adopted requirements. Contrary to ComEd’s allegations, Staff’s proposal does not require the SAG to do anything, although interested SAG participants have the opportunity to participate if they so desire. As quoted above, this was one of the key features of Staff’s NTG framework that would help ensure the framework process would actually work. Step (3) of Staff’s framework states, “All non-evaluator parties (jointly or individually) can submit...” (Staff IB, 33

(emphasis added).) Step (6) states, “All non-evaluator parties (jointly or individually) may submit...” (Staff IB, 34 (emphasis added).) All other steps listed in Staff’s framework relate to ComEd or Evaluator responsibilities and they are not burdensome; the steps in Staff’s NTG Framework proposal simply reflect the reality of what information, time commitments, and deadlines are needed based upon Staff’s experience with the Plan 2 NTG Framework and evaluation report review cycles. Staff emphasizes that numerous comments and meetings already occur between ComEd and the Evaluator concerning evaluation and NTG-related issues, far more than those proposed in Staff’s NTG Framework. (ComEd Ex. 1.0, 111.) The 11 steps in Staff’s NTG Framework proposal simply result in greater transparency in the evaluation deliberations compared to what Staff currently believes exists. It is reasonable for the Commission to adopt Staff’s Modified Illinois NTG Framework in the Section 8-103 and 8-104 EE Plan filing dockets.

ComEd argues that Staff and the AG seek to “elevate” the role of the SAG to decision-maker rather than advisor and the Commission has expressly prohibited such in prior Orders. (ComEd IB, 70.) What ComEd fails to mention is that its proposal to elevate the Evaluator’s role to decision-maker rather than independent consultant has been expressly prohibited in prior Orders. ICC Order Docket No. 07-0540 at 27 (Feb. 6, 2008) (“The Commission reviews of ComEd’s plan to determine compliance with the energy efficiency goals is separate and apart from the independent evaluation required by Section 103(f)(7) of the statute.”). In its IB, the AG responds to ComEd’s accusation of “elevating” the SAG to decision-maker and states:

This criticism borders on the disingenuous, and is simply not true. The AG and Staff-proposed NTG frameworks both call for the same kind of consensus-building process that the SAG has always engaged in related to NTG analysis, only with changes that provide the Company with more certainty (and accordingly, less risk of unexpectedly low savings values upon evaluation of program measures) tha[n] has ever existed since the inception of the programs.

(AG IB, 48 (emphasis added).) Staff generally concurs with the AG's characterization quoted above with respect to Staff's NTG Framework. The Commission should adopt Staff's Modified Illinois NTG Framework proposal in its entirety and reject ComEd's position that deeming NTGR values that are consensus among all interested parties "elevates" the SAG's role to that of a decision-maker.

Under Staff's proposed framework, the Commission continues to have the final say through the evaluation dockets consistent with ComEd's framework; however, under Staff's framework there is expected to be significantly less litigation in the evaluation dockets because Staff's framework proposal is based on consensus among all interested parties on the NTG ratio to be deemed. Consensus is defined in Staff's NTG Framework: "Consensus means that no party indicates they oppose a specific NTGR value enough to contest it before the Commission." (Staff IB, 34.) ComEd has proposed only a single evaluation docket investigating ComEd's performance encompassing the three years of Plan 3. (ComEd IB, 87-88.) NRDC opposes a single evaluation docket, and Staff opposes a single evaluation docket if Staff's reporting recommendations are not adopted. If the Commission adopts ComEd's proposal to have only a single evaluation docket, then this would mean that the savings evaluation docket associated with Plan 3 will not be initiated until, at the earliest, January of 2018. The earliest date by which the Evaluator makes a decision on a specific NTGR to deem

is March of 2014 under ComEd's proposal. Thus, if parties disagree with the Evaluator, the first opportunity to challenge the Evaluator before the Commission would be nearly four years after the Evaluator has already made its decision, and ComEd relied upon it (likely longer than four year based on Staff's experience with getting past savings dockets started). In addition to opposition on the first year's NTG values, there could be opposition on the NTG values for the second and third year of ComEd's Plan as well under ComEd's proposed NTG framework. All of these issues with the Evaluator's recommended deemed NTGR values for ComEd would need to be resolved in the three-year savings evaluation docket. In other words, because ComEd's framework does not contemplate consensus deemed NTG ratios, it significantly increases the risk of excessive litigation in the savings evaluation proceeding.

It should be noted that ComEd made it clear that it does not want the Commission annually approving in a docketed proceeding deemed NTGR values either under ComEd's proposal or under Staff's proposal. (Staff Group Cross Ex. 1, 151.)

Accordingly, ComEd's arguments should be rejected, and the Commission should adopt in its entirety Staff's Modified Illinois NTG Framework as set forth in Staff Exhibit 1.1.

B. VOTING PARTIES

The Commission should order the Company to use Staff's proposed Modified Illinois NTG Framework (Staff Exhibit 1.1) with no modifications and reject the AG's proposal to add a definition for "voting parties" to Staff's Modified Illinois NTG Framework.

In its IB, the AG indicates support for Staff's Modified Illinois NTG Framework with the addition of "voting parties" as set forth in Item 2 of the AG/ELPC NTG

Framework. (AG IB, 46.) Item 2 of the AG/ELPC NTG Framework states, in relevant part:

In cases where consensus among voting parties is reached in the SAG on an individual NTGR value by March 1 (PYt), that consensus NTGR value shall be deemed for the applicable program year (PYt+1), provided that the Program Administrators file the consensus NTGR values with the Commission in the TRM annual update docket no later than March 1 (PYt).

(AG Ex. 1.1, 2; ELPC Ex. 1.2, 2 (footnotes omitted).) Footnote 3 in Item 2 of the AG/ELPC NTG Framework states, in pertinent part:

“Voting parties” are the program administrators, Staff, and other parties that have traditionally intervened in EEPs dockets and consistently participated in the SAG. These are AG, NRDC, ELPC and CUB. However, voting members cannot also be subcontractors in Section 8-103/104 efficiency programs.

(AG Ex. 1.1, 2; ELPC Ex. 1.2, 2.) Program administrators are defined in the IL-TRM and IL-TRM Policy Document as consisting of the utilities (Ameren Illinois, ComEd, Nicor Gas, and Integrys (North Shore Gas and Peoples Gas)) and DCEO. (Staff Ex. 3.2, 4.) Thus, the voting parties under the AG/ELPC NTG Framework include: program administrators (i.e., Ameren Illinois, ComEd, DCEO, Nicor Gas, Integrys), AG, CUB, ELPC, ICC Staff, and NRDC. This could be interpreted as either 6 or 10 voting parties, depending on whether each program administrator is allowed to vote on proposed NTG values for other program administrators. It is important to point out that the AG/ELPC NTG Framework requires consensus to be reached among all voting parties. (AG Ex. 1.1, 2; ELPC Ex. 1.2, 2.) “Consensus means that no party indicates they oppose a specific NTGR value enough to contest it before the Commission.” (AG Ex. 1.1, 2; ELPC Ex. 1.2, 2; Staff Ex.1.1, 3.) In other words, if one of the voting parties opposes a specific NTGR value enough to contest it, then consensus would not be reached. While

the current proposal requires consensus, the establishment of voting parties in this proceeding could lead to the establishment of voting parties in other contexts where the majority's position is adopted. The Commission has repeatedly declined to give SAG decision-making authority, and Staff is concerned that the development of voting parties in this proceeding would be the first step toward such a structure. See, e.g., ICC Order Docket No. 10-0568 at 86.

In regard to the creation of voting parties, the AG argues that the definition is not one of limiting any particular party or to be exclusive. (AG IB, 46.) The AG also admits that SAG meetings have traditionally been open to anyone to attend, and further admits this concept has always been supported by the AG because it is a good practice that allows for honest sharing of ideas and ensures greater transparency of SAG's deliberations. (AG IB, 46-47.) The AG expresses concern that Staff's approach in practice could allow literally anyone to attend a SAG meeting and refuse to agree to a NTG consensus position regardless of whether that party has any particular knowledge or expertise on the issue, or whether they have ever intervened or otherwise been involved in energy policy in Illinois. (AG IB, 47.) The AG argues that many attendees at the SAG are subcontractors to another party. For example, consultants helping the program administrators design and plan programs, evaluators, and implementation contractors who sometimes are paid based on performance could conceivably vote under Staff's approach, and have a clear conflict of interest in regard to the ultimate NTG ratio selected. (AG IB, 47.) The AG argues that it would be inappropriate to allow these parties a formal vote because they generally are attending the SAG as contractors to some other party that already has a vote.

The AG provides no evidence to support this alleged concern that subcontractors will try to hold up the consensus-seeking process. (Staff Ex. 3.0, 9.) There has been no showing that the utilities' subcontractors would oppose an updated NTGR value that was otherwise a consensus value. Id. Subcontractors would not oppose an updated NTGR value that was otherwise a consensus updated NTGR value among SAG participants because objecting to a consensus NTGR value means that these subcontractors object to a NTGR value supported by their employer. (Staff Ex. 3.0, 10.) This is not in the subcontractors' best interests. Indeed, Staff's experience over the past two years during the development of the IL-TRM and the TRM Update Process demonstrates that subcontractors, including Evaluators and implementation contractors, do not attempt to delay that consensus-reaching process, even though they may not have necessarily agreed with the consensus that was reached. (Staff Ex. 3.0, 10.) Thus, there is no basis for introducing a drastic shift in the Commission-designed SAG changing its fundamental structure as a consensus building advisory group.

Staff has concerns that the AG's proposal constitutes a drastic shift in the SAG structure. When the Commission ordered the SAG's creation in ICC Docket No. 07-0540, the Commission explicitly provided that the group include representation from a "variety of interests." Plan 1 Order at 24. The SAG is a voluntary group consisting of over thirty organizations, with new organizations requesting to participate in the SAG throughout the Plan. (Staff Ex. 3.0, 10.) The AG's proposal to create a voting structure that is limited to a small portion of SAG participants is contrary to the inclusiveness that the SAG has provided to date. Id. at 10-11. Indeed, this openness to all interested parties could likely be a reason why the participation in the SAG continues to grow. Id.

at 11. Adoption of the AG's "voting structure" for NTG updates may serve to offend many SAG participants and discourage future participation by organizations. Id. The Commission should reject the proposal to significantly shift the structure of the SAG process to make certain SAG participants more equal than others.

The AG argues that if any other party or parties that fits that criteria were to join and become more active and desire to participate in voting on NTG consensus issues, the AG would support that right, so long as they do not have a clear conflict such as being a contractor for a utility program. (AG IB, 47.) The criteria used by AG witness Mosenthal to select voting parties includes: "entities have been regular, active members of the SAG and that, to date, do not have any obvious conflicts[.]" (AG Ex. 1.0C, 38:8-10.) The AG does not set forth a process where the Commission would approve the addition of new voting parties. (Staff Ex. 3.0, 11.) Presumably, a Commission determination that the party does not have any obvious conflicts would be necessary. Id. Based on the criteria proposed by the AG, it seems that the utilities have obvious conflicts given that they are subject to penalties and potentially loss of the EE programs if they fail to meet the energy savings goals approved by the Commission, and lowering of a NTGR value makes it more difficult to reach such goals. Id. Yet, the AG proposes including the utilities as voting parties. It should also be noted that the entities included in the AG's definition of SAG voting parties differs from the SAG members identified in ComEd's Plan. (ComEd Ex. 1.0, 23.) If the Commission adopts the AG's proposal to create voting parties as part of Staff's NTG Framework, which it should not, then the Commission should explicitly exclude the utilities from such definition.

It is not clear how exactly the AG's voting process would work if certain voting parties are unavailable to participate during NTG discussions. (Staff Ex. 3.0, 12.) For example, if one of the special SAG voting parties spent no time reviewing any of the information contained in the NTG memorandums submitted by the Evaluators or if they failed to attend the SAG meetings where the proposed NTG ratios were discussed, it is not clear whether their voting party status would be suspended for the program year, or whether they would be required to vote even though they failed to participate throughout the entire NTG update process. (Staff Ex. 3.0, 12.) This is an important point because Staff's experience in the TRM Update Process has found dwindling stakeholder participation at times.

The AG expresses concerns about allowing any SAG participant the right to refuse to agree to a NTG consensus position regardless of whether that party has any particular knowledge or expertise on the issue, yet the AG's creation of voting parties makes no assurances that such voting parties have any particular knowledge or expertise on the NTG issues for which they would be voting on. Id.

Without designating specific voting parties, it will be possible to determine whether consensus has been reached regarding updated NTGR values. Id. Indeed, this approach is consistent with the existing Commission-approved process for annually updating the IL-TRM. (Staff Ex. 3.2, 6, 8.) The Commission-adopted IL-TRM Policy Document states: "Through the annual TRM Update Process, SAG participants shall make good faith efforts to reach consensus on all TRM Updates. Once consensus develops at the SAG level, the TRM Administrator will include the changes in the Updated TRM that is submitted to the Commission for approval." (Staff Ex. 3.2, 8

(emphasis added).) The SAG is currently able to develop and reach consensus on IL-TRM Updates without modifying the SAG structure and without identifying specific voting parties, as evidenced by the Commission's approval of the IL-TRM Version 2.0, which was developed by consensus process. The Commission specifically found that the IL-TRM Version 2.0 "was arrived at using the Commission-mandated process, it is a consensus document, and it is consistent with the Commission's Orders and the TRM Policy Document adopted by the Commission." ICC Order Docket No. 13-0437 at 4 (Nov. 6, 2013) (footnote omitted). Staff's Modified Illinois NTG Framework includes a process where any interested party must dissent in writing by a specific date to indicate there are non-consensus updated NTGR values. (Staff Ex. 3.1.) Further, the independent Evaluators are tasked with providing meeting notes after the NTG update meetings which can clearly document consensus and non-consensus NTGR values, which is somewhat comparable to the role the TRM Administrator takes in the TRM Update Process.

ComEd argues that a child could wander into a SAG meeting and cast her vote under Staff's proposed NTG Framework. (ComEd IB, 77.) This scenario is simply absurd. The Commission has no rules in place which limit who may participate; instead, the Commission has a process which allows for participation by the public. The same is true for Staff's NTG framework, which requires that an objecting party submit a NTGR Objection Memo by a specific date. It is unnecessary to propose limitations on who may participate in the SAG, as the objection process proposed by Staff cures the need for any voting parties.

For the foregoing reasons, the Commission should reject the AG's proposal to add a definition for "voting parties" to Staff's Modified Illinois NTG Framework.

C. RESOLUTION OF NON-CONSENSUS NTGR VALUES

The Commission should order the Company to use Staff's proposed Modified Illinois NTG Framework (Staff Exhibit 1.1). The Commission should reject NRDC's and ComEd's positions concerning the resolution on non-consensus NTGR values.

ComEd argues Staff's approach to addressing non-consensus should be rejected because it actually increases ComEd's risk when compared to the Plan 2 NTG framework, and thus undermines the entire purpose of the framework to increase certainty and decrease risk. (ComEd IB, 73.) As noted by the AG, "none of the intervenors or Staff has introduced new risk into this docket. Rather, these parties simply disagree with ComEd's request to remove the risk." (AG IB, 23.) Further, Staff's proposal "allows use of more current evaluations that in general should better reflect the likely current and future performance of the program." (AG IB, 44.) Since there is a degree of uncertainty in the case of non-consensus NTGR values under Staff's proposal, albeit significantly diminished in comparison to the NTG frameworks adopted for Plan 1 and Plan 2, the utility has an incentive to agree to a consensus deemed NTGR value reflective of the value likely to exist in the program year or to move funds away from a risky proposition and towards less risky propositions. (Staff Ex. 2.0, 19.) This provides benefits to ratepayers because the utility has an incentive to manage risky programs rather than to divert the risk to ratepayers. (Staff Ex. 2.0, 19-20.) Staff's proposal reduces uncertainty and risk to ComEd while simultaneously maintaining the need for ComEd to respond to uncertainty. (Staff Ex. 2.0, 19.) As noted by the AG, Staff's proposal allows for deeming NTG values *in all cases*, whereas under the Plan 2

NTG framework, the utilities were subject to retroactive application based on a number of circumstances. (AG IB, 46.)

NRDC argues against Staff's resolution of non-consensus issues on the basis that the second year average may not be known until well into the program year. (NRDC, 31.) As Staff previously stated, for ComEd's largest residential program it is possible to have the NTG results for the second year before the start of the effective program year that the NTG would be deemed. Because in-store customer intercept surveys for the CFL program, ComEd's largest residential program, occur during the program year to ensure questions are directed to actual ComEd program participants in the particular program year, the results from such study can be available before the start of the program year for which the NTG would be deemed. Given this particular program is the main program for which consensus was not reached under the previous NTG framework, Staff believes the resolution of non-consensus NTG values is reasonable and can provide substantial certainty to the utility, especially for programs that are undergoing significant market change such as the CFL program.

ComEd proposes having the independent Evaluator determine the NTGR values that shall be deemed for ComEd going forward. (ComEd IB, 70.) ComEd places such high reliance on the Evaluator's findings in cases where it is advantageous to ComEd's position, yet ComEd undermines the Evaluator in cases where ComEd does not like its position. (ComEd IB, 76.) Staff has great concerns about the Evaluator having binding decision-making authority on deeming NTGR values for ComEd when ComEd holds the contract with the Evaluator and the Evaluator is also hired by ComEd. (Staff IB, 31.) In Staff's attempt at compromise, ComEd made it clear that it does not want the

Commission annually approving in a docketed proceeding deemed NTGR values either under ComEd's proposal or under Staff's proposal. (Staff Group Cross Ex. 1, 151.) In summary, the Commission should adopt Staff's proposed Modified Illinois NTG Framework (Staff Exhibit 1.1) because it appropriately balances the interests of ComEd with that of ratepayers.

VIII. POTENTIAL STUDY

The Commission should direct that future Potential Studies should analyze economically efficient potential.

ComEd argues that Staff's proposal to have economically efficient potential assessed in future Potential Studies should be rejected. ComEd asserts Staff's proposal is premature because the Potential Study is conducted just once every three years and one was recently conducted. (ComEd IB, 96.) Staff emphasizes that ComEd's point that the Potential Study is conducted only once every three years supports Staff's position that this proceeding is the proper forum to direct such analysis take place in order to ensure the next Potential Study includes such analysis in the next three-year Plan filing. The benefit of measuring economically efficient potential is that it informs the Commission and interested stakeholders about the maximum energy savings possible for a given budget. (Staff Ex. 2.0, 23-24.) Staff's position should be adopted.

ComEd argues that the Potential Study methodology proposal raised by Dr. Brightwell is better suited for discussion and consideration by the SAG rather than the Commission's order in this docket. (ComEd IB, 96.) Staff disagrees. Staff raised concerns with the Potential Study methodologies over the past year at SAG meetings in

an effort to help ensure the Commission had useful information regarding the potential energy savings that would maximize the welfare of ratepayers by providing the economically efficient level of energy efficiency. Nevertheless, despite raising this issue at SAG meetings, ComEd did not direct its consultant to implement such an analysis. Thus, it is Staff's opinion that a Commission directive is required to ensure this analysis takes place and is included in ComEd's next three-year Plan filing. The Commission has a complete record upon which to direct such analysis take place in this docket. Accordingly, the Commission should direct that future Potential Studies analyze economically efficient potential as described in Staff Exhibit 2.0.

IX. CONCLUSION

For the reasons set forth above Staff respectfully requests that the Commission's Final Order in the instant proceeding reflect Staff's recommendations consistent with Staff's Briefs.

Respectfully submitted,

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